# MTB Rubber Sdn Bhd v Wangi KMB Bhd

HIGH COURT (MELAKA) — CIVIL SUIT NO 22–69 OF 2005
LOW HOP BING J
25 APRIL 2007

*Civil procedure — Injunction — Interim injunction — Interim injunction granted to restrain defendant from encroaching and trespassing on plaintiff's land — Whether plaintiff entitled ex debito justitiae to an injunction*

*Tort — Trespass — Encroachment — Whether plaintiff not being the original owner of the land when encroachment and trespass first occurred has a cause of action against the defendant*

The plaintiff is the registered owner of three parcels of land. In a joint venture with Kumpulan Melaka Bhd, the defendant carries on the business of a housing developer for a project known as Taman Sutera Wangi on parcels of land adjacent to the plaintiff's land. The plaintiff alleged that the defendant's servants or agents carried out earthworks on the defendant's land and this encroached and trespassed on the plaintiff's land. In this action, the plaintiff filed an application for an injunction to restrain the defendant, its agents and servants from encroaching and trespassing on the plaintiff's land, to require the defendant to restore the affected areas of the plaintiff's land and to construct a retaining wall adjacent to the plaintiff's land. The defendant contended that the plaintiff was not the original owner of the land in question.

**Held,** allowing the plaintiff's application with costs:

(1) Upon a true construction of the letters between the plaintiff and the defendant, the defendant had admitted the encroachment and trespass on the plaintiff's land (see paras 8, 14).

(2) The fact that the plaintiff was not the original owner but was the new owner of the land in question does not affect the plaintiff's cause of action as the encroachment and trespass committed by the defendant had continued unabated. The tort of encroachment and trespass here is a continuing one which gives rise to a cause of action from day to day (see para 11).

(3) The plaintiff as registered and beneficial owner of the land on which trespass is committed is entitled to an interlocutory mandatory injunction in order to have the source of the trespass removed, notwithstanding that the source of the trespass had already been in existence before the plaintiff became the owner of the land, and regardless of whether or not he knew or had notice of it (see para 12).

**[Bahasa Malaysia summary**

Plaintif merupakan pemilik berdaftar kepada tiga bidang tanah. Dalam satu usahasama dengan Kumpulan Melaka Bhd, defendan menjalankan perniagaan dengan pemaju perumahan untuk satu projek dikenali sebagai Taman Sutera Wangi di atas tanah-tanah bersebelahan dengan tanah-tanah plaintif. Plaintif mendakwa pekerja-pekerja atau agen-agen defendan telah menjalankan kerja-kerja tanah atas tanah defendan ini telah memasuki dan menceroboh ke atas tanah plaintif. Dalam tindakan ini, plaintif memfailkan satu permohonan untuk injunksi bagi menghalang defendan, agen-agennya dan perkerja-perkerjanya dari memasuki dan menceroboh ke atas tanah plaintif, memastikan defendan mengembalikan semula kawasan di atas tanah plaintif yang terjejas dan membina tembok penahan bersebelahan dengan tanah plaintif. Defendan menegaskan bahawa plaintif bukanlah pemilik asal kepada tanah yang menjadi persoalan.

**Diputuskan,** membenarkan permohonan plaintif dengan kos:

(1) Setelah meneliti pentafsiran sebenar surat-surat antara plaintif dan defendan, defendan mengaku berkenaan perlanggaran dan pencerobohan ke atas tanah plaintif.

(2) Berkenaan fakta bahawa plaintif bukan pemilik asal tetapi pemilik baru kepada tanah yang menjadi persoalan tidak menjejaskan kausa tindakan plaintif kerana kemasukan dan pencerobohan yang dilakukan oleh defendan secara berterusan dan tidak akan berkurangan. Tort untuk kemasukan dan pencerobohan di sini adalah secara berterusan yang kausa tindakannya adalah dari sehari ke sehari.

(3) Plaintif sebagai pemilik berdaftar dan pemilik benefisial kepada harta tanah tersebut yang mana pencerobohan telah dilakukan berhak kepada injunksi mandatori interlokutori bertujuan menyingkirkan punca pencerobohan, meskipun punca pencerobohan telah wujud sebelum plaintif menjadi pemilik tanah tersebut, dan tidak kira sama ada dia tahu atau mempunyai pengetahuan atau tidak.]

**Notes**

For cases on interim injunction, see 2(1) *Mallal's Digest* (4th Ed, 2004 Reissue) paras 2769–2830.

For cases on encroachment, see 12 *Mallal's Digest* (4th Ed, 2002 Reissue) 1480–1481.

**Cases referred to**

*Cheah Kim Tong & Anor v Taro Kaur* [1989] 3 MLJ 252 (refd)

*Immetec Sdn Bhd v Yong Tai Hoong & Anor* [1995] 1 MLJ 390 (refd)

*Karuppannan v Balakrishmen (Chong Lee Chin & Ors, third parties)* [1994] 3 MLJ 584 (refd)

*Ng Yee Fong & Anor v EW Talalla* [1986] 1 MLJ 25 (refd)

*Sin Heap Lee-Marubeni Sdn Bhd v Yip Shou Shan* [2005] 1 MLJ 515 (refd)

*Mohd Nazri bin Abd Hamid (Anuar Hong & Ong) for the defendant.*
*Wong Fook Meng (Chee Siah Le Kee & Partners) for the plaintiff.*

**Low Hop BingJ:**

APPLICATION

**[1]** This is the plaintiff's application in encl 10 for an injunction:

(1) to restrain the defendant, its agents and servants from encroaching and trespassing on the plaintiff's land;

(2) to require the defendant to restore the affected areas of the plaintiff's land; and

(3) to construct a retaining wall adjacent to the plaintiff's land.

FACTUAL BACKGROUND

**[2]** The affidavits filed herein reveal that the plaintiff was with effect from 1 September 2004 and 30 March 2005, and still is, the registered and beneficial owner of three parcels of land held under GM700 Lot 1462; GM701 Lot No 1463; and Grant No 1643 Lot 2489 (collectively 'the plaintiff's land') in the mukim of Durian Tunggal, district of Alor Gajah Melaka.

**[3]** In a joint venture with Kumpulan Melaka Bhd ('KMB'), the defendant carries on the business of a housing developer for the project known as Taman Sutera Wangi on the defendant's parcels of land (collectively 'the defendant's land') adjacent to the plaintiff's land.

**[4]** It is alleged that the defendant's servants or agents have carried out earthworks on the defendant's land, and the earthworks have encroached and trespassed on the plaintiff's land, to an extent of 6,712.5 sq ft. Vide solicitors' letters dated 23 September 2004, 21 October 2004 and 2 December 2004, the plaintiff gave notice to the defendant of the defendant's encroachment and trespass and required the defendant to take remedial measures.

**[5]** The defendant had, vide Exh MTB11, consisting of two letters dated 2 December 2004 and 17 December 2004 to KMB, referred to and admitted the said encroachment and trespass, and requested KMB to amicably settle the matter with the plaintiff. The aforesaid correspondence was not on a 'without prejudice' basis.

ENCROACHMENT AND TRESPASS

**[6]** The defendant's learned counsel Mr Mohd Nazri bin Abd Hamid submitted that in the two letters in Exh MTB11, the defendant had neither admitted the trespass to the plaintiff's land nor requested any amicable settlement as the plaintiff was not the original owner of the land in question.

**[7]** Learned counsel Mr Wong Fook Meng relied on the defendant's letters of admission in MTB11 to support the fact of encroachment and trespass. A

**[8]** In my judgment, the resolution to the above sharply conflicting submissions lies in the true construction to be placed on the documentary exhibits, viz MTB10 and MTB11. B

**[9]** I shall start with Exh MTB10 which consists of two letters dated 21 October 2004 and 2 December 2004 respectively, issued by the plaintiff's solicitors to both the defendant and KMB, referring to the said encroachment and trespass, and that was accompanied by a demand, inter alia, for a restoration of the affected areas to its original condition at the cost of both the defendant and KMB, failing which the plaintiff would hold both the defendant and KMB liable for all losses and damages that may thereby be suffered by the plaintiff. C

**[10]** In response to exh MTB10, KMB had vide a letter dated 17 December 2004 enclosed the letter dated 2 December 2004 (both these letters are in Exh MTB11) which expressly proposed to resolve the matter as follows: D

(1) to reimburse the surveyor and legal fees incurred by the plaintiff and requested the plaintiff to forward the bills to the defendant;

(2) to make good the works 'disturbed' due to soil erosion at locations one, three and a portion of location two, and E

(3) to compensate the loss from the affected areas at location four and the portion of location two at a reasonable sum.

**[11]** In my view, the fact that the plaintff was not the original owner but was the new owner with effect from 1 September 2004 and 30 March 2005 does not affect the plaintiff's cause of action as the encroachment and trespass committed by the defendant had continued unabated. Further, the tort of encroachment and trespass herein is a continuing one which gives rise to a cause of action from day to day: *Cheah Kim Tong & Anor v Taro Kaur* [1989] 3 MLJ 252 per Peh Swee Chin J (later FCJ). F G

**[12]** Encroachment and trespass to land committed by the defendant as owner of the adjacent land is a wrongful act. The plaintiff as registered and beneficial owner of the land on which trespass is committed is entitled to an interlocutory mandatory injunction in order to have the source of the trespass removed, notwithstanding the fact that the source of the trespass had already been in existence before the new owner became the owner thereof, and regardless of whether or not he knew or had notice of it: per Lamin FCJ (later PCA) in*Karuppannan v Balakrishnan (Chong Lee Chin & Ors, third parties* [1994] 3 MLJ 584 at p 593 H I

**[13]** In *Sin Heap Lee-Marubeni Sdn Bhd v Yip Shou Shan* [2005] 1 MLJ 515, it was unanimously held by the Court of Appeal that there was no merit in the defendant's submission that the first incident of trespass took place before the plaintiff came into possession of the land in question.

**[14]** As the defendant has admitted encroachment and trespass on the plaintiff's land and the plaintiff has established a proprietary right to the land as registered and beneficial owner thereof, and the defendant as trespasser has not established any right either in law or equity to remain on the paintiff's land, the plaintiff is ex debito justitiae entitled to an injunction: (see the Supreme Court judgment in *Ng Yee Fong & Anor v EW Talalla* [1986] 1 MLJ 25 per Mohamed Azmi SCJ (as he then was) and followed by me in *Immetec Sdn Bhd v Yong Tai Hoong & Anor* [1995] 1 MLJ 390 at 394).

CONCLUSION

**[15]** Learned counsel for both the parties herein have raised other issues. Upon a careful consideration, I am of the view that they are not relevant to the disposal of the application before me. However, I wish to record my appreciation for their efforts expended thereon

*Plaintiff's application for injunction allowed with costs.*

Reported by Brendan Navin Siva